

Themis J. Fotico
MAJ

HOUSE BILL No. 5002

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September 22, 2011, Introduced by Reps. Jacobsen, Bumstead, Jenkins, Damrow, Price, Lund, Agema, Pscholka, Lori, Olson, Shaughnessy, LaFontaine, Muxlow, MacGregor, Rendon and Zorn and referred to the Committee on Commerce.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending sections 301, 315, 331, 353, 354, 360, 361, and 801
(MCL 418.301, 418.315, 418.331, 418.353, 418.354, 418.360, 418.361,
and 418.801), sections 301 and 354 as amended by 1987 PA 38,
section 315 as amended by 2009 PA 226, sections 331 and 801 as
amended by 1994 PA 271, and section 361 as amended by 1985 PA 103,
and by adding section 306; and to repeal acts and parts of acts.

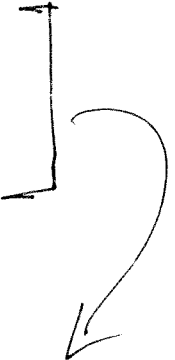
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. (1) An employee, who receives a personal injury
2 arising out of and in the course of employment by an employer who
3 is subject to this act at the time of the injury, shall be paid
4 compensation as provided in this act. PERSONAL INJURY ^{shall also} ~~INCLUDES~~ A
5 DISEASE OR DISABILITY THAT IS DUE TO CAUSES AND CONDITIONS THAT ARE
6 CHARACTERISTIC OF AND PECULIAR TO THE BUSINESS OF THE EMPLOYER AND

The added language in Sec. 301(1) is being brought into this Chapter 3 (Injuries) because the author is eliminating Chapter 4 (Occupational Diseases) under the label of modernizing. This is dangerous. Chapter 4 should remain as is because it has its own body of law applicable to occupational diseases. However, if this occupational disease language must be inserted into Sec. 301(1), then the phrase "shall also" should be inserted so that "injury" cases do not become almost impossible to prove. It's easy to argue that a lung disease is peculiar to a foundry. However, it's very difficult to argue that tripping over an electrical cord is peculiar to any particular business. Those injuries can occur in any business.

1 THAT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT. A PERSONAL
 2 INJURY COVERED UNDER THIS ACT IS COMPENSABLE IF IT CAUSES,
 3 CONTRIBUTES TO, OR AGGRAVATES PATHOLOGY IN A MANNER THAT IS
 4 MEDICALLY DISTINGUISHABLE FROM THE EMPLOYEE'S PRIOR CONDITION. AN
 5 ORDINARY DISEASE OF LIFE TO WHICH THE PUBLIC IS GENERALLY EXPOSED
 6 OUTSIDE OF THE EMPLOYMENT IS NOT COMPENSABLE. In the case of death
 7 resulting from the personal injury to the employee, compensation
 8 shall be paid to the employee's dependents as provided in this act.
 9 Time of injury or date of injury as used in this act in the case of
 10 a disease or in the case of an injury not attributable to a single
 11 event ~~shall be~~ IS the last day of work in the employment in which
 12 the employee was last subjected to the conditions that resulted in
 13 the employee's disability or death.

(2) Mental disabilities and conditions of the aging process,
 15 including but not limited to heart and cardiovascular conditions ~~7~~
 16 ~~shall be~~ AND DEGENERATIVE ARTHRITIS, ARE compensable if contributed
 17 to or aggravated or accelerated by the employment in a significant
 18 manner. Mental disabilities ~~shall be~~ ARE compensable when IF
 19 arising out of actual events of employment, not unfounded
 20 perceptions thereof, AND IF THE EMPLOYEE'S PERCEPTION OF THE ACTUAL
 21 EVENTS IS REASONABLY GROUNDED IN FACT OR REALITY. MENTAL DISABILITY
 22 NOT CAUSED BY PHYSICAL TRAUMA IS COMPENSABLE ONLY IF IT RESULTS
 23 FROM GREATER MENTAL STRESS AND TENSION THAN THE DAY-TO-DAY MENTAL
 24 STRESS AND TENSION THAT ALL EMPLOYEES EXPERIENCE IN SIMILAR
 25 EMPLOYMENT. A HERNIA IS COMPENSABLE ONLY IF IT IS OF RECENT ORIGIN,
 26 RESULTS FROM A STRAIN ARISING OUT OF AND IN THE COURSE OF THE
 27 EMPLOYMENT, AND IS PROMPTLY REPORTED TO THE EMPLOYER.



This sentence is more than a codification of existing law involving mental impairments. This seemingly innocent sentence will craftily make most mental impairment cases in high stress jobs almost impossible to win. For instance, a firefighter will have a hard time arguing that he has experienced stress greater than other firefighters. And yet, firefighters experience more stress than other occupations.

(3) An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours is presumed to be in the course of his or her employment.

Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131.

(4) As used in this chapter ~~"disability"~~ ACT:

(A) "DISABILITY" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work-related disease.

A LIMITATION OF WAGE EARNING CAPACITY OCCURS ONLY IF A PERSONAL INJURY COVERED UNDER THIS ACT RESULTS IN THE EMPLOYEE'S BEING UNABLE TO PERFORM ALL JOBS PAYING THE HISTORICAL MAXIMUM WAGES IN WORK SUITABLE TO THAT EMPLOYEE'S QUALIFICATIONS AND TRAINING, INCLUDING WORK THAT MAY BE PERFORMED USING THE EMPLOYEE'S TRANSFERABLE WORK SKILLS. A DISABILITY IS TOTAL IF THE EMPLOYEE IS UNABLE TO EARN IN ANY JOB SUITABLE TO THE EMPLOYEE'S QUALIFICATIONS AND TRAINING. A DISABILITY IS PARTIAL IF THE EMPLOYEE RETAINS A WAGE EARNING CAPACITY AT A PAY LEVEL LESS THAN HIS OR HER HISTORICAL MAXIMUM WAGES IN WORK SUITABLE TO HIS OR HER QUALIFICATIONS AND TRAINING. The establishment of disability does not create a presumption of wage loss.

(B) "WAGE EARNING CAPACITY" MEANS THE WAGES THE EMPLOYEE EARNS OR IS CAPABLE OF EARNING, WHETHER OR NOT ACTUALLY EARNED.

(C) "WAGE LOSS" MEANS THE AMOUNT OF WAGES LOST DUE TO A

The phrase "wage earning capacity" has a long history in the workers compensation system. Early on, the impairment was judged as to whether it impacted the worker's "general field of labor (unskilled/skilled)". The later use of the phrase "wage earning capacity" was intended to displace that dichotomy. Here, the proponent is taking the phrase "wage earning capacity" and giving it new meaning by indicating that it also includes anything that a worker is "capable of earning".

1 DISABILITY. WAGE LOSS MAY BE ESTABLISHED, AMONG OTHER METHODS, BY
 2 DEMONSTRATING THE EMPLOYEE'S REASONABLE, GOOD-FAITH EFFORT TO
 3 PROCURE WORK SUITABLE TO HIS OR HER WAGE EARNING CAPACITY.

4 (5) IF A PERSONAL INJURY ARISING OUT OF THE COURSE OF
 5 EMPLOYMENT CAUSES TOTAL DISABILITY AND WAGE LOSS AND THE EMPLOYEE
 6 IS ENTITLED TO WAGE LOSS BENEFITS, THE EMPLOYER SHALL PAY OR CAUSE
 7 TO BE PAID TO THE INJURED EMPLOYEE AS PROVIDED IN THIS SECTION
 8 WEEKLY COMPENSATION EQUAL TO 80% OF THE EMPLOYEE'S AFTER-TAX
 9 AVERAGE WEEKLY WAGE, BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE
 10 DETERMINED UNDER SECTION 355. COMPENSATION SHALL BE PAID FOR THE
 11 DURATION OF THE DISABILITY.

12 (6) IF A PERSONAL INJURY ARISING OUT OF THE COURSE OF
 13 EMPLOYMENT CAUSES PARTIAL DISABILITY AND WAGE LOSS AND THE EMPLOYEE
 14 IS ENTITLED TO WAGE LOSS BENEFITS, THE EMPLOYER SHALL PAY OR CAUSE
 15 TO BE PAID TO THE INJURED EMPLOYEE AS PROVIDED IN THIS SECTION
 16 WEEKLY COMPENSATION EQUAL TO 80% OF THE DIFFERENCE BETWEEN THE
 17 INJURED EMPLOYEE'S AFTER-TAX AVERAGE WEEKLY WAGE BEFORE THE
 18 PERSONAL INJURY AND THE EMPLOYEE'S WAGE EARNING CAPACITY AFTER THE
 19 PERSONAL INJURY, BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE
 20 DETERMINED UNDER SECTION 355. COMPENSATION SHALL BE PAID FOR THE
 21 DURATION OF THE DISABILITY.

22 (7) ~~(5) If disability is~~ AND WAGE LOSS ARE established,
 23 ~~pursuant to subsection (4),~~ entitlement to weekly wage loss
 24 benefits shall be determined pursuant to this section and as
 25 follows:

26 (a) If an employee receives a bona fide offer of reasonable
 27 employment from the previous employer, another employer, or through

The change in Subsection (6) above creates more unnecessary harm to disabled workers than any other change in the history of the Workers Disability Compensation Act. Previously, a worker who was partially disabled was paid 80% of the difference between the wage he made before and the wage he made after. Here, the prior actual wage is being reduced by the theoretical retained wage. By comparing apples with oranges, almost every single workers compensation case will result in a wage loss benefit that is either eliminated or reduced drastically.

1 the Michigan employment ~~security commission~~ **UNEMPLOYMENT INSURANCE**
 2 AGENCY and the employee refuses that employment without good and
 3 reasonable cause, OR IF THE EMPLOYEE IS TERMINATED FROM REASONABLE
 4 EMPLOYMENT FOR FAULT OF THE EMPLOYEE, the employee shall be
 5 considered to have voluntarily removed himself or herself from the
 6 work force and is no longer entitled to any wage loss benefits
 7 under this act during the period of such refusal.

8 (b) If an employee is employed and the average weekly wage of
 9 the employee is less than that which the employee received before
 10 the date of injury, the employee shall receive weekly benefits
 11 under this act equal to 80% of the difference between the injured
 12 employee's after-tax weekly wage before the date of injury and the
 13 after-tax weekly wage ~~which~~ **THAT** the injured employee is able to
 14 ~~earn~~ **EARN** after the date of injury, but not more than the maximum
 15 weekly rate of compensation, as determined under section 355.

16 (c) If an employee is employed and the average weekly wage of
 17 the employee is equal to or more than the average weekly wage the
 18 employee received before the date of injury, the employee is not
 19 entitled to any wage loss benefits under this act for the duration
 20 of such ~~that~~ employment.

21 (d) If the employee, after having been employed pursuant to
 22 this subsection ~~for 100 weeks or more~~ loses his or her job through
 23 no fault of the employee **AND THE EMPLOYEE IS STILL DISABLED**, the
 24 employee shall receive compensation under this act ~~pursuant to the~~
 25 ~~following~~ **AS FOLLOWS:**

26 (i) ~~if after exhaustion of unemployment benefit eligibility of~~
 27 ~~an employee, a worker's compensation magistrate or hearing referee,~~

The language concerning termination for fault should be changed so that the standard would be an objective standard. We should all be judged equally. Most workers are at-will employees and for that reason, an employee can terminate them for any reason and without a hearing. An employer is able to write an Employee Handbook to include anything he/she wants. Some employer can make the most minor condition a cause for termination. Does that mean that it constitutes "fault"? Will a disabled worker be able to argue that his termination was not for "fault", even if the employer so claims? This is very subjective

1 ~~as applicable, determines for any employee covered under this~~
2 ~~subdivision, that the employments since the time of injury have not~~
3 ~~established a new wage earning capacity, the employee shall receive~~
4 ~~compensation based upon his or her wage at the original date of~~
5 ~~injury. There is a presumption of wage earning capacity established~~
6 ~~for employments totalling 250 weeks or more. IF THE EMPLOYEE WAS~~
7 ~~EMPLOYED FOR LESS THAN 100 WEEKS, THE EMPLOYEE SHALL RECEIVE~~
8 ~~COMPENSATION BASED UPON HIS OR HER WAGE AT THE TIME OF THE ORIGINAL~~
9 ~~INJURY.~~

10 (ii) ~~The employee must still be disabled as determined pursuant~~
11 ~~to subsection (4). If the employee is still disabled, he or she~~
12 ~~shall be entitled to wage loss benefits based on the difference~~
13 ~~between the normal and customary wages paid to those persons~~
14 ~~performing the same or similar employment, as determined at the~~
15 ~~time of termination of the employment of the employee, and the~~
16 ~~wages paid at the time of the injury. IF THE EMPLOYEE WAS EMPLOYED~~
17 ~~FOR 100 WEEKS OR MORE BUT LESS THAN 250 WEEKS, THEN AFTER~~
18 ~~EXHAUSTING UNEMPLOYMENT BENEFIT ELIGIBILITY, A WORKER'S~~
19 ~~COMPENSATION MAGISTRATE MAY DETERMINE THAT THE EMPLOYMENT SINCE THE~~
20 ~~TIME OF THE INJURY HAS NOT ESTABLISHED A NEW WAGE EARNING CAPACITY~~
21 ~~AND, IF THE MAGISTRATE MAKES THAT DETERMINATION, BENEFITS SHALL BE~~
22 ~~BASED ON HIS OR HER WAGE AT THE ORIGINAL DATE OF INJURY. IF THE~~
23 ~~MAGISTRATE DOES NOT MAKE THAT DETERMINATION, THE EMPLOYEE IS~~
24 ~~PRESUMED TO HAVE ESTABLISHED A POST-INJURY WAGE EARNING CAPACITY~~
25 ~~AND BENEFITS SHALL NOT BE PAID BASED ON THE WAGE AT THE ORIGINAL~~
26 ~~DATE OF INJURY.~~

27 (iii) ~~If the employee becomes reemployed and the employee is~~

1 ~~still disabled, he or she shall then receive wage loss benefits as~~
2 ~~provided in subdivision (b).~~ IF THE EMPLOYEE WAS EMPLOYED FOR 250
3 WEEKS OR MORE, THE EMPLOYEE IS CONCLUSIVELY PRESUMED TO HAVE
4 ESTABLISHED A POST-INJURY WAGE EARNING CAPACITY.

5 ~~----- (e) If the employee, after having been employed pursuant to~~
6 ~~this subsection for less than 100 weeks loses his or her job for~~
7 ~~whatever reason, the employee shall receive compensation based upon~~
8 ~~his or her wage at the original date of injury.~~

9 ~~----- (6) A carrier shall notify the Michigan employment security~~
10 ~~commission of the name of any injured employee who is unemployed~~
11 ~~and to which the carrier is paying benefits under this act.~~

12 ~~----- (7) The Michigan employment security commission shall give~~
13 ~~priority to finding employment for those persons whose names are~~
14 ~~supplied to the commission under subsection (6).~~

15 (8) The Michigan employment security commission-UNEMPLOYMENT
16 INSURANCE AGENCY shall notify the bureau in writing of the name of
17 any employee who refuses any bona fide offer of reasonable
18 employment. Upon notification to the bureau, the bureau shall
19 notify the carrier who shall terminate the benefits of the employee
20 pursuant to subsection (5)(a)-(7) (A).

21 (9) "Reasonable employment", as used in this section, means
22 work that is within the employee's capacity to perform that poses
23 no clear and proximate threat to that employee's health and safety,
24 and that is within a reasonable distance from that employee's
25 residence. The employee's capacity to perform shall not be limited
26 to jobs in work suitable to his or her qualifications and training.

27 (10) Weekly benefits shall not be ARE NOT payable during the

1 period of confinement to a person who is incarcerated in a penal
2 institution for violation of the criminal laws of this state or who
3 is confined in a mental institution pending trial for a violation
4 of the criminal laws of this state, if the violation or reason for
5 the confinement occurred while at work and is directly related to
6 the claim. WEEKLY BENEFITS ARE NOT PAYABLE DURING THE PERIOD OF
7 IMPRISONMENT FOLLOWING SENTENCING FOR A CRIME, IF THE EMPLOYEE IS
8 UNABLE TO OBTAIN EMPLOYMENT OR PERFORM WORK BECAUSE OF THAT
9 IMPRISONMENT.

10 (11) A person shall not discharge an employee or in any manner
11 discriminate against an employee because the employee filed a
12 complaint or instituted or caused to be instituted a proceeding
13 under this act or because of the exercise by the employee on behalf
14 of himself or herself or others of a right afforded by this act.

15 ~~----- (12) This section shall apply to personal injuries and work~~
16 ~~related diseases occurring on or after June 30, 1985.~~

17 SEC. 306. (1) FOR A MEMBER OF A FULL PAID FIRE DEPARTMENT OF
18 AN AIRPORT RUN BY A COUNTY ROAD COMMISSION IN COUNTIES OF 1,000,000
19 POPULATION OR MORE OR BY A STATE UNIVERSITY OR COLLEGE OR OF A FULL
20 PAID FIRE OR POLICE DEPARTMENT OF A CITY, TOWNSHIP, OR INCORPORATED
21 VILLAGE EMPLOYED AND COMPENSATED UPON A FULL-TIME BASIS, A COUNTY
22 SHERIFF AND THE DEPUTIES OF THE COUNTY SHERIFF, MEMBERS OF THE
23 STATE POLICE, CONSERVATION OFFICERS, AND MOTOR CARRIER INSPECTORS
24 OF THE MICHIGAN PUBLIC SERVICE COMMISSION, "PERSONAL INJURY" SHALL
25 BE CONSTRUED TO INCLUDE RESPIRATORY AND HEART DISEASES OR ILLNESSES
26 RESULTING FROM THOSE DISEASES THAT DEVELOP OR MANIFEST THEMSELVES
27 WHILE THE INDIVIDUAL IS IN ACTIVE SERVICE AND THAT RESULT FROM

1 PERFORMING DUTIES IN THE COURSE OF EMPLOYMENT.

2 (2) RESPIRATORY AND HEART DISEASES OR ILLNESSES RESULTING FROM
3 THOSE DISEASES AS DESCRIBED IN SUBSECTION (1) ARE CONSIDERED TO
4 ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT IN THE ABSENCE OF
5 EVIDENCE TO THE CONTRARY.

6 (3) AS A CONDITION PRECEDENT TO FILING AN APPLICATION FOR
7 BENEFITS AND SUBJECT TO SECTION 354(12), THE CLAIMANT, IF HE OR SHE
8 IS DESCRIBED IN SUBSECTION (1), SHALL FIRST APPLY FOR, AND DO ALL
9 THINGS NECESSARY TO QUALIFY FOR, ANY PENSION BENEFITS TO WHICH HE
10 OR SHE, OR HIS OR HER DECEDENT, MAY BE ENTITLED. IF A FINAL
11 DETERMINATION IS MADE THAT PENSION BENEFITS SHALL NOT BE AWARDED,
12 THEN THE PRESUMPTION OF "PERSONAL INJURY" AS PROVIDED IN SUBSECTION
13 (2) APPLIES. THE EMPLOYER OR EMPLOYEE MAY REQUEST 2 COPIES OF THE
14 DETERMINATION DENYING PENSION BENEFITS, 1 COPY OF WHICH MAY BE
15 FILED WITH THE BUREAU.

16 Sec. 315. (1) The employer shall furnish, or cause to be
17 furnished, to an employee who receives a personal injury arising
18 out of and in the course of employment, reasonable medical,
19 surgical, and hospital services and medicines, or other attendance
20 or treatment recognized by the laws of this state as legal, when
21 they are needed. However, an employer is not required to reimburse
22 or cause to be reimbursed charges for an optometric service unless
23 that service was included in the definition of practice of
24 optometry under section 17401 of the public health code, 1978 PA
25 368, MCL 333.17401, as of May 20, 1992 or for a chiropractic
26 service unless that service was included in the definition of
27 practice of chiropractic under section 16401 of the public health

1 code, 1978 PA 368, MCL 333.16401, as of January 1, 2009. An
2 employer is not required to reimburse or cause to be reimbursed
3 charges for services performed by a profession that was not
4 licensed or registered by the laws of this state on or before
5 January 1, 1998, but that becomes licensed, registered, or
6 otherwise recognized by the laws of this state after January 1,
7 1998. Attendant or nursing care shall not be ordered in excess of
8 56 hours per week if the care is to be provided by the employee's
9 spouse, brother, sister, child, parent, or any combination of these
10 persons. After 10-90 days from the inception of medical care as
11 provided in this section, the employee may treat with a physician
12 of his or her own choice by giving to the employer the name of the
13 physician and his or her intention to treat with the physician. The
14 employer or the employer's carrier may file a petition objecting to
15 the named physician selected by the employee and setting forth
16 reasons for the objection. If the employer or carrier can show
17 cause why the employee should not continue treatment with the named
18 physician of the employee's choice, after notice to all parties and
19 a prompt hearing by a worker's compensation magistrate, the
20 worker's compensation magistrate may order that the employee
21 discontinue treatment with the named physician or pay for the
22 treatment received from the physician from the date the order is
23 mailed. The employer shall also supply to the injured employee
24 dental service, crutches, artificial limbs, eyes, teeth,
25 eyeglasses, hearing apparatus, and other appliances necessary to
26 cure, so far as reasonably possible, and relieve from the effects
27 of the injury. If the employer fails, neglects, or refuses so to

90 days is a long time to be stuck with a doctor you don't like, particularly where your nerve root continues to be damaged by pressure from a herniated disk, but the doctor doesn't even want to order an MRI to find out if you have a herniated disk. This 90 day period should be reduced either back to 10 days, or 30 days. If not, then at least an exception should be created so that the worker could at least have a choice as to who his surgeon would be.

1 do, the employee shall be reimbursed for the reasonable expense
2 paid by the employee, or payment may be made in behalf of the
3 employee to persons to whom the unpaid expenses may be owing by
4 order of the worker's compensation magistrate. The worker's
5 compensation magistrate may prorate attorney fees at the contingent
6 fee rate paid by the employee. ATTORNEY FEES RELATED TO MEDICAL
7 EXPENSES ARE CHARGEABLE TO EITHER THE EMPLOYEE OR THE MEDICAL
8 PROVIDER, OR BOTH, BUT ARE NOT CHARGEABLE TO THE EMPLOYER OR
9 CARRIER.

10 (2) Except as otherwise provided in subsection (1), all fees
11 and other charges for any treatment or attendance, service,
12 devices, apparatus, or medicine under subsection (1), are subject
13 to rules promulgated by the workers' compensation agency pursuant
14 to the administrative procedures act of 1969, 1969 PA 306, MCL
15 24.201 to 24.328. The rules promulgated shall establish schedules
16 of maximum charges for the treatment or attendance, service,
17 devices, apparatus, or medicine, which schedule shall be annually
18 revised. A health facility or health care provider shall be paid
19 either its usual and customary charge for the treatment or
20 attendance, service, devices, apparatus, or medicine, or the
21 maximum charge established under the rules, whichever is less.

22 (3) The director of the workers' compensation agency shall
23 provide for an advisory committee to aid and assist in establishing
24 the schedules of maximum charges under subsection (2) for charges
25 or fees that are payable under this section. The advisory committee
26 shall be appointed by and serve at the pleasure of the director.

27 (4) If a carrier determines that a health facility or health

1 care provider has made any excessive charges or required
2 unjustified treatment, hospitalization, or visits, the health
3 facility or health care provider shall not receive payment under
4 this chapter from the carrier for the excessive fees or unjustified
5 treatment, hospitalization, or visits, and is liable to return to
6 the carrier the fees or charges already collected. The workers'
7 compensation agency may review the records and medical bills of a
8 health facility or health care provider determined by a carrier to
9 not be in compliance with the schedule of charges or to be
10 requiring unjustified treatment, hospitalization, or office visits.

11 (5) As used in this section, "utilization review" means the
12 initial evaluation by a carrier of the appropriateness in terms of
13 both the level and the quality of health care and health services
14 provided an injured employee, based on medically accepted
15 standards. A utilization review shall be accomplished by a carrier
16 pursuant to a system established by the workers' compensation
17 agency that identifies the utilization of health care and health
18 services above the usual range of utilization for the health care
19 and health services based on medically accepted standards and
20 provides for acquiring necessary records, medical bills, and other
21 information concerning the health care or health services.

22 (6) By accepting payment under this chapter, a health facility
23 or health care provider shall be considered to have consented to
24 submitting necessary records and other information concerning
25 health care or health services provided for utilization review
26 pursuant to this section. The health facilities and health care
27 providers shall be considered to have agreed to comply with any

1 decision of the workers' compensation agency pursuant to subsection
2 (7). A health facility or health care provider that submits false
3 or misleading records or other information to a carrier or the
4 workers' compensation agency is guilty of a misdemeanor punishable
5 by a fine of not more than \$1,000.00 or by imprisonment for not
6 more than 1 year, or both.

7 (7) If it is determined by a carrier that a health facility or
8 health care provider improperly overutilized or otherwise rendered
9 or ordered inappropriate health care or health services, or that
10 the cost of the health care or health services was inappropriate,
11 the health facility or health care provider may appeal to the
12 workers' compensation agency regarding that determination pursuant
13 to procedures provided for under the system of utilization review.

14 (8) The criteria or standards established for the utilization
15 review shall be established by rules promulgated by the workers'
16 compensation agency. A carrier that complies with the criteria or
17 standards as determined by the workers' compensation agency shall
18 be certified by the department.

19 (9) If a health facility or health care provider provides
20 health care or a health service that is not usually associated
21 with, is longer in duration in time than, is more frequent than, or
22 extends over a greater number of days than that health care or
23 service usually does with the diagnosis or condition for which the
24 patient is being treated, the health facility or health care
25 provider may be required by the carrier to explain the necessity or
26 indication for the reasons why in writing.

27 ~~Sec. 331. The following persons shall be conclusively presumed~~

1 ~~to be wholly dependent for support upon a deceased employee.~~

2 ~~—— (a) A wife upon a husband with whom she lives at the time of~~
3 ~~his death, or from whom, at the time of his death, a worker is~~
4 ~~compensation magistrate shall find the wife was living apart for~~
5 ~~justifiable cause or because he had deserted her.~~

6 ~~(b) A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A child
7 under the age of 16 years, or 16 YEARS OR over 16 years of age if
8 physically or mentally incapacitated from earning, IS CONCLUSIVELY
9 PRESUMED TO BE WHOLLY DEPENDENT FOR SUPPORT upon the parent with
10 whom he or she is living at the time of the death of that parent.
11 In the event of the death of an employee who has at the time of
12 death a living child by a former spouse or a child who has been
13 deserted by such ~~THE~~ deceased employee under the age of 16 years,
14 or over if physically or mentally incapacitated from earning, such
15 THAT child shall be conclusively presumed to be wholly dependent
16 for support upon the deceased employee, even though not living with
17 the deceased employee at the time of death, and in all cases the
18 THE death benefit shall be divided between or among the surviving
19 spouse and all the children of the deceased employee, and all other
20 persons, if any, AMONG ALL PERSONS who are wholly dependent upon
21 the deceased employee, in equal shares, the surviving spouse taking
22 the same share as a child. In all cases mentioned in this section
23 the ~~THE~~ total sum due a surviving spouse and his or her own
24 children shall be paid directly to the surviving spouse for his or
25 her own use, and for the use and benefit of his or her own
26 children. If during the time compensation payments shall continue,
27 a worker's compensation magistrate shall find FINDS that the

1 surviving spouse is not properly caring for ~~such~~ THOSE children,
2 the worker's compensation magistrate shall order the shares of ~~such~~
3 THE children to be thereafter paid to their guardian or legal
4 representative for their use and benefit, instead of to their
5 father or mother. In all cases the sums due to the children by the
6 former spouse of the deceased employee shall be paid to their
7 guardians or legal representatives for the use and benefit of ~~such~~
8 THOSE children. In all other cases questions of dependency, in
9 whole or in part, shall be determined in accordance with the ~~fact,~~
10 ~~as the fact may be~~ FACTS at the time of the injury. ~~Where~~ IF a
11 deceased employee leaves a person wholly dependent upon him or her
12 for support, ~~such~~ THAT person shall be entitled to the whole death
13 benefit and persons partially dependent, if any, shall receive no
14 part thereof, while the person wholly dependent is living. All
15 persons wholly dependent upon a deceased employee, whether by
16 conclusive presumption or as a matter of fact, shall be entitled to
17 share equally in the death benefit in accordance with the
18 provisions of this section. If there is no one wholly dependent or
19 if the death of all persons wholly dependent ~~shall occur~~ OCCURS
20 before all compensation is paid, and there is ~~but~~ ONLY 1 person
21 partially dependent, ~~such~~ THAT person ~~shall be~~ IS entitled to
22 compensation according to the extent of his or her dependency; and
23 if there is more than 1 person partially dependent, the death
24 benefit shall be divided among them according to the relative
25 extent of their dependency. A person shall not be considered a
26 dependent unless he or she is a member of the family of the
27 deceased employee, or unless such person bears to the deceased

1 employee the relation of widower or widow, lineal descendant,
2 ancestor, or brother or sister.

3 Sec. 353. (1) For the purposes of sections 351 to 361,
4 dependency shall be determined as follows:

5 ~~----- (a) The following shall be conclusively presumed to be~~
6 ~~dependent for support upon an injured employee:~~

7 ~~----- (i) The wife of an injured employee living with such employee~~
8 ~~as such wife at the time of the injury.~~

9 (A) ~~(ii)~~ A child under the age of 16 years, or 16 YEARS OR over
10 said age, if physically or mentally incapacitated from earning,
11 living with his parent at the time of the injury of such THAT
12 parent.

13 (b) In all other cases questions of dependency shall be
14 determined in accordance with the fact, ~~as the fact may be~~ FACTS at
15 the time of the injury, except as provided in subsection (3). ~~No~~
16 ~~person shall~~ A PERSON SHALL NOT be considered a dependent unless he
17 OR SHE is a member of the family of the injured employee, or unless
18 ~~such~~ THE person bears to ~~such~~ THE injured employee the relation of
19 husband or wife, or lineal descendant, or ancestor or brother or
20 sister. Except as to ~~these~~ A PERSON conclusively presumed to be
21 ~~dependents, no person shall be deemed a dependent who~~ A DEPENDENT,
22 A PERSON WHO receives less than 1/2 of his OR HER support from an
23 injured employee SHALL NOT BE CONSIDERED TO BE A DEPENDENT.

24 (2) Weekly payments to an injured employee shall be reduced by
25 the additional amount provided for any dependent child or spouse or
26 other dependent when ~~such~~ THE child either reaches the age of 18
27 years or after becoming 16 ceases for a period of 6 months to

1 receive more than 1/2 of his OR HER support from ~~such~~ THE injured
 2 employee, if at ~~such~~ THAT time ~~he~~ THE CHILD is neither physically
 3 nor mentally incapacitated from earning; ~~or when such~~ WHEN THE
 4 spouse ~~shall be~~ IS divorced by final decree from his OR HER injured
 5 spouse; ~~or when such~~ THE child, spouse, or other dependent ~~shall~~
 6 ~~be~~ IS deceased.

7 (3) An increase in payments shall be made for increased
 8 numbers of conclusive dependents as defined in this act WHO WERE
 9 not ~~se~~ dependent at the time of the injury of an employee.

10 Sec. 354. (1) This section ~~is applicable when~~ APPLIES IF
 11 either weekly or lump sum payments are made to an employee as a
 12 result of liability ~~pursuant to~~ UNDER section 351, 361, or 835 with
 13 respect to the same time period for which THE EMPLOYEE ALSO
 14 RECEIVED OR IS RECEIVING old-age insurance benefit payments under
 15 the social security act, 42 U.S.C. ~~USC~~ 301 to 1397f; payments under
 16 a self insurance plan, a wage continuation plan, or a disability
 17 insurance policy provided by the employer; or pension or retirement
 18 payments ~~pursuant to~~ UNDER a plan or program established or
 19 maintained by the employer. ~~are also received or being received~~
 20 ~~by the employee~~ Except as otherwise provided in this section, the
 21 employer's obligation to pay or cause to be paid weekly benefits
 22 other than specific loss benefits under section 361(2) and (3)
 23 shall be reduced by these amounts:

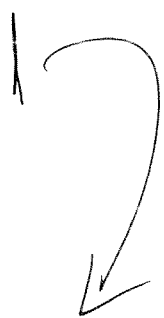
24 (a) Fifty percent of the amount of the old-age insurance
 25 benefits received or being received under the social security act.

26 (b) The after-tax amount of the payments received or being
 27 received under a self-insurance plan, a wage continuation plan, or

1 under a disability insurance policy provided by the same employer
 2 from whom benefits under section 351, 361, or 835 are received if
 3 the employee did not contribute directly to the plan or to the
 4 payment of premiums regarding the disability insurance policy. If
 5 ~~such~~ THE self-insurance plans, wage continuation plans, or
 6 disability insurance policies are entitled to repayment in the
 7 event of a worker's compensation benefit recovery, the carrier
 8 shall satisfy ~~such~~ THAT repayment out of funds the carrier has
 9 received through the coordination of benefits provided for under
 10 this section. Notwithstanding the provisions of this subsection,
 11 attorney fees shall be paid pursuant to section 821 to the attorney
 12 who secured the worker's compensation recovery.

13 (c) The proportional amount, based on the ratio of the
 14 employer's contributions to the total insurance premiums for the
 15 policy period involved, of the after-tax amount of the payments
 16 received or being received by the employee pursuant to a disability
 17 insurance policy provided by the same employer from whom benefits
 18 under section 351, 361, or 835 are received, if the employee did
 19 contribute directly to the payment of premiums regarding the
 20 disability insurance policy.

21 (d) ~~The~~ SUBJECT TO SUBSECTION (12), THE after-tax amount of
 22 the pension or retirement payments received or being received BY
 23 THE EMPLOYEE, OR WHICH THE EMPLOYEE IS ELIGIBLE TO RECEIVE,
 24 pursuant to a plan or program established or maintained by the same
 25 employer from whom benefits under section 351, 361, or 835 are
 26 received, if the employee did not contribute directly to the
 27 pension or retirement plan or program. Subsequent increases in a



This language is being added to allow an employer to subtract a retirement/pension benefit from the workers compensation benefit, when the worker refuses to file for his pension or retirement, even though he is now of mature age to do so. This is understandable. However, to the extent it entitles the employer credit for an early/reduced pension which the employee was not intending to access, even though he may now be eligible, is extremely unfair. Please note that this section is prefaced with the phrase "Subject to Subsection 12". Please go to page 24 for further commentary.

1 pension or retirement program shall not affect the coordination of
2 these benefits.

3 (e) The proportional amount, based on the ratio of the
4 employer's contributions to the total contributions to the plan or
5 program, of the after-tax amount of the pension or retirement
6 payments received or being received by the employee pursuant to a
7 plan or program established or maintained by the same employer from
8 whom benefits under section 351, 361, or 835 are received, if the
9 employee did contribute directly to the pension or retirement plan
10 or program. Subsequent increases in a pension or retirement program
11 shall not affect the coordination of these benefits.

12 (f) For those employers who do not provide a pension plan, the
13 proportional amount, based on the ratio of the employer's
14 contributions to the total contributions made to a qualified profit
15 sharing plan under section 401(a) of the internal revenue code or
16 any successor to section 401(a) of the internal revenue code
17 covering a profit sharing plan which provides for the payment of
18 benefits only upon retirement, disability, death, or other
19 separation of employment to the extent that benefits are vested
20 under the plan.

21 (2) To satisfy any remaining obligations under section 351,
22 361, or 835, the employer shall pay or cause to be paid to the
23 employee the balance due in either weekly or lump sum payments
24 after the application of subsection (1).

25 (3) In the application of subsection (1) any credit or
26 reduction shall occur pursuant to this section and all of the
27 following:

1 (a) The bureau shall promulgate rules to provide for
2 notification by an employer or carrier to an employee of possible
3 eligibility for social security benefits and the requirements for
4 establishing proof of application for those benefits. Notification
5 shall be promptly mailed to the employee after the date on which by
6 reason of age the employee may be entitled to social security
7 benefits. A copy of the notification of possible eligibility shall
8 be filed with the bureau by the employer or carrier.

9 (b) Within 30 days after receipt of the notification of
10 possible employee eligibility the employee shall:

11 (i) Make application for social security benefits.

12 (ii) Provide the employer or carrier with proof of that
13 application.

14 (iii) Provide the employer or carrier with an authority for
15 release of information which shall be utilized by the employer or
16 carrier to obtain necessary benefit entitlement and amount
17 information from the social security administration. The authority
18 for release of information shall be effective for 1 year.

19 (4) ~~Failure of~~ IF the employee FAILS to provide the proof of
20 application or the authority for release of information as
21 prescribed in subsection (3), ~~shall allow~~ the employer or carrier,
22 with the approval of the bureau, ~~to~~ MAY discontinue the
23 compensation benefits payable to the employee under section 351,
24 361, or 835 until the proof of application and the authority for
25 release of information is provided. Compensation benefits withheld
26 shall be reimbursed to the employee upon the providing of the
27 required proof of application, or the authority for release of

1 information, or both.

2 (5) If the employer or carrier is required to submit a new
3 authority for release of information to the social security
4 administration in order to receive information necessary to comply
5 with this section, the employee shall provide the new authority for
6 release of information within 30 days of a request by the employer
7 or carrier. ~~Failure~~ IF THE EMPLOYEE FAILS to provide the new
8 authority for release of information, ~~shall allow~~ the employer or
9 carrier, with the approval of the bureau, ~~to~~ MAY discontinue
10 benefits until the authority for release of information is provided
11 as prescribed in this subsection. Compensation benefits withheld
12 shall be reimbursed to the employee upon the providing of the new
13 authority for release of information.

14 (6) Within 30 days after either the date of first payment of
15 compensation benefits under section 351, 361, or 835, or 30 days
16 after the date of application for any benefit under subsection
17 (a)(1), (c), (d), or (e), whichever is later, the employee shall
18 provide the employer or carrier with a properly executed authority
19 for release of information, which shall be utilized by the employer
20 or carrier to obtain necessary benefit entitlement and amount
21 information from the appropriate source. The authority for release
22 of information is effective for 1 year. Failure of the employee to
23 provide a properly executed authority for release of information
24 shall allow the employer or carrier with the approval of the bureau
25 to discontinue the compensation benefits payable under section 351,
26 361, or 835 to the employee until the authority for release of
27 information is provided. Compensation benefits withheld shall be

1 reimbursed to the employee upon providing the required authority
2 for release of information. If the employer or carrier is required
3 to submit a new authority for release of information to the
4 appropriate source in order to receive information necessary to
5 comply with this section, the employee shall provide a properly
6 executed new authority for release of information within 30 days
7 after a request by the employer or carrier. Failure of the employee
8 to provide a properly executed new authority for release of
9 information shall allow the employer or carrier with the approval
10 of the bureau to discontinue benefits under section 351, 361, or
11 835 until the authority for release of information is provided as
12 prescribed in this subsection. Compensation benefits withheld shall
13 be reimbursed to the employee upon the providing of the new
14 authority for release of information.

15 (7) A credit or reduction under this section shall not occur
16 because of an increase granted by the social security
17 administration as a cost of living adjustment.

18 (8) Except as provided in subsections (4), (5), and (6), a
19 credit or reduction of benefits otherwise payable for any week
20 shall not be taken under this section until there has been a
21 determination of the benefit amount otherwise payable to the
22 employee under section 351, 361, or 835 and the employee has begun
23 receiving the benefit payments.

24 (9) Except as otherwise provided in this section, any benefit
25 payments under the social security act, or any fund, policy, or
26 program as specified in subsection (1) ~~which~~ THAT the employee has
27 received or is receiving after March 31, 1962 and during a period

1 in which the employee was receiving unreduced compensation benefits
2 under section 351, 361, or 835 shall be considered to have created
3 an overpayment of compensation benefits for that period. The
4 employer or carrier shall calculate the amount of the overpayment
5 and send a notice of overpayment and a request for reimbursement to
6 the employee. Failure by the employee to reimburse the employer or
7 carrier within 30 days after the mailing date of the notice of
8 request for reimbursement shall allow the employer or carrier with
9 the approval of the bureau to discontinue 50% of future weekly
10 compensation payments under section 351, 361 or 835. The
11 compensation payments withheld shall be credited against the amount
12 of the overpayment. Payment of the appropriate compensation benefit
13 shall resume when the total amount of the overpayment has been
14 withheld.

15 (10) The employer or carrier taking a credit or making a
16 reduction as provided in this section shall immediately report to
17 the bureau the amount of any credit or reduction, and as requested
18 by the bureau, furnish to the bureau satisfactory proof of the
19 basis for a credit or reduction.

20 (11) Disability insurance benefit payments under the social
21 security act shall be considered to be payments from funds provided
22 by the employer and to be primary payments on the employer's
23 obligation under section 351, 361, or 835 as old-age benefit
24 payments under the social security act are considered pursuant to
25 this section. The coordination of social security disability
26 benefits shall commence on the date of the award certificate of the
27 social security disability benefits. Any accrued social security

1 disability benefits shall not be coordinated. However, social
 2 security disability insurance benefits shall only be so considered
 3 if section 224 of the social security act, ~~42 U.S.C.~~ USC 424a, is
 4 revised so that a reduction of social security disability insurance
 5 benefits is not made because of the receipt of worker's
 6 compensation benefits by the employee.

7 (12) Nothing in this section shall be considered to compel an
 8 employee to apply for early federal social security old-age
 9 insurance benefits or to apply for early or reduced pension or
 10 retirement benefits.

11 (13) As used in this section, "after-tax amount" means the
 12 gross amount of any benefit under subsection (1)(b), (1)(c),
 13 (1)(d), or (1)(e) reduced by the prorated weekly amount which would
 14 have been paid, if any, under the federal insurance contributions
 15 act, ~~26 U.S.C.~~ USC 3101 to ~~3126~~ 3128, AND state income tax and
 16 federal income tax, calculated on an annual basis using as the
 17 number of exemptions the disabled employee's dependents plus the
 18 employee, and without excess itemized deductions. In determining
 19 the "after-tax amount" the tables provided for in section 313(2)
 20 shall be used. The gross amount of any benefit under subsection
 21 (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same
 22 as the average weekly wage for purposes of the table. The
 23 applicable 80% of after-tax amount as provided in the table will be
 24 multiplied by 1.25 which will be conclusive for determining the
 25 "after-tax amount" of benefits under subsection (1)(b), (1)(c),
 26 (1)(d), or (1)(e).

27 (14) This section does not apply to any payments received or

Although this subsection indicates that there is no intent to compel an employee, it does not indicate that the workers compensation benefit will not be reduced if he/she chooses not to apply for an early/reduced pension. For this reason, the following should be added at the end of the sentence in (12): "and no credit or reduction under this section shall occur due to the employee's choice not to apply for such an early/reduced benefit".

1 to be received under a disability pension plan provided by the same
2 employer, which plan is in existence on March 31, 1982. Any
3 disability pension plan entered into or renewed after March 31,
4 1982 may provide that the payments under that disability pension
5 plan provided by the employer shall not be coordinated pursuant to
6 this section.

7 (15) With respect to volunteer fire fighters, volunteer safety
8 patrol officers, volunteer civil defense workers, and volunteer
9 ambulance drivers and attendants who are considered employees for
10 purposes of this act pursuant to section 161(1)(a), the reduction
11 of weekly benefits provided for disability insurance payments under
12 subsection (1)(b) and (c) and subsection (11) may be waived by the
13 employer. An employer that is not a self-insurer may make the
14 waiver provided for under this subsection only at the time a
15 worker's compensation insurance policy is entered into or renewed.

16 (16) This section ~~shall~~ DOES not apply to payments made to an
17 employee as a result of liability pursuant to section 541.2 and
18 (c) for the specific loss period set forth therein. It is the
19 intent of the legislature that, because benefits under section
20 161(b) and (c) are benefits which recognize human factors
21 substantially in addition to the wage loss concept, coordination of
22 benefits should not apply to such benefits.

23 (17) The decision of the Michigan Supreme Court in Franks v
24 White Pine Copper Division, 422 Mich 636 (1985) is declared to have
25 been erroneously rendered insofar as it interprets this section, it
26 having been and being the legislative intention not to coordinate
27 payments under this section resulting from liability pursuant to

1 section 351, 361, or 835 for personal injuries occurring before
2 March 31, 1982. It is the purpose of ~~this~~ THE amendatory act THAT
3 ADDED THIS SUBSECTION to so affirm That remedial and curative
4 amendment shall be liberally construed to effectuate this purpose.

5 (18) This section applies only to payments resulting from
6 liability pursuant to section 351, 361, or 835 for personal
7 injuries occurring on or after March 31, 1982. Any payments made to
8 an employee resulting from liability pursuant to section 351, 361,
9 or 835 for a personal injury occurring before March 31, 1982 that
10 have not been coordinated under this section as of the effective
11 date of this subsection shall not be coordinated, shall not be
12 considered to have created an overpayment of compensation benefits,
13 and shall not be subject to reimbursement to the employer or
14 carrier.

15 (19) Notwithstanding any other section of this act, any
16 payments made to an employee resulting from liability pursuant to
17 section 351, 361, or 835 for a personal injury occurring before
18 March 31, 1982 that have been coordinated before ~~the effective date~~
19 ~~of this subsection~~ MAY 14, 1987 shall be considered to be an
20 underpayment of compensation benefits, and the amounts withheld
21 pursuant to coordination shall be disbursed with interest, ~~within~~
22 ~~60 days of the effective date of this subsection,~~ BY JULY 13, 1987,
23 to the employee by the employer or carrier.

24 (20) Notwithstanding any other section of this act, any
25 employee who has paid an employer or carrier money alleged by the
26 employer or carrier to be owed the employer or carrier because that
27 employee's benefits had not been coordinated under this section and

1 whose date of personal injury was before March 31, 1982 shall be
2 reimbursed with interest, ~~within 60 days of the effective date of~~
3 ~~this subsection~~ BY JULY 13, 1987, that money by the employer or
4 carrier.

5 (21) If any portion of this section is subsequently found to
6 be unconstitutional or in violation of applicable law, it shall not
7 affect the validity of the remainder of this section.

8 Sec. 360. (1) A person who suffers an injury arising out of
9 and in the course of employment as a professional athlete ~~shall be~~
10 IS entitled to weekly benefits only when the person's average
11 weekly wages in all employments at the time of application for
12 benefits, and thereafter, as computed in accordance with section
13 371, are less than 200% of the state average weekly wage.

14 ~~THIS SECTION~~ (2) ~~THIS SECTION~~ THIS SUBSECTION shall not be construed to
15 prohibit an otherwise eligible person from receiving benefits under
16 section 315, 319, or 361.

17 (2) A PROFESSIONAL ATHLETE WHO IS HIRED UNDER A CONTRACT WITH
18 AN EMPLOYER OUTSIDE OF THIS STATE IS EXCEPTED FROM THE PROVISIONS
19 OF THIS ACT IF ALL OF THE FOLLOWING CONDITIONS APPLY:

20 (A) THE ATHLETE SUSTAINS A PERSONAL INJURY ARISING OUT OF THE
21 COURSE OF EMPLOYMENT WHILE THE PROFESSIONAL ATHLETE IS TEMPORARILY
22 WITHIN THIS STATE.

23 (B) THE EMPLOYER HAS OBTAINED WORKER'S COMPENSATION INSURANCE
24 COVERAGE UNDER THE WORKER'S COMPENSATION LAW OF ANOTHER STATE THAT
25 COVERS THE INJURY IN THIS STATE.

26 (C) THE OTHER STATE RECOGNIZES THE EXTRATERRITORIAL PROVISIONS
27 OF THIS ACT AND PROVIDES A RECIPROCAL EXEMPTION FOR PROFESSIONAL

1 ATHLETES WHOSE INJURIES ARISE OUT OF EMPLOYMENT WHILE TEMPORARILY
2 IN THAT STATE AND ARE COVERED BY THE WORKER'S COMPENSATION LAW OF
3 THIS STATE.

4 (3) THE BENEFITS AND OTHER REMEDIES UNDER THE WORKER'S
5 COMPENSATION LAWS OF ANOTHER STATE ARE THE EXCLUSIVE REMEDY AGAINST
6 THE EMPLOYER UNDER THE CONDITIONS IN SUBSECTION (2). A CERTIFICATE
7 FROM THE DULY AUTHORIZED OFFICER OF ANOTHER STATE CERTIFYING THAT
8 THE EMPLOYER IS INSURED IN THAT STATE AND HAS OBTAINED
9 EXTRATERRITORIAL COVERAGE INSURING THE EMPLOYER'S PROFESSIONAL
10 ATHLETES IN THIS STATE IS PRIMA FACIE EVIDENCE THAT THE EMPLOYER
11 HAS OBTAINED INSURANCE MEETING THE REQUIREMENTS FOR THE EXCEPTION
12 TO COVERAGE UNDER THIS ACT UNDER SUBSECTION (2).

13 Sec. 361. (1) While the incapacity for work resulting from a
14 personal injury is partial, the employer shall pay, or cause to be
15 paid to the injured employee weekly compensation equal to 80% of
16 the difference between the injured employee's after-tax average
17 weekly wage before the personal injury and the after-tax average
18 weekly wage which the injured employee is able to earn after the
19 personal injury, but not more than the maximum weekly rate of
20 compensation, as determined under section 255. Compensation shall
21 be paid for the duration of the disability. However, an employer
22 shall not be liable for compensation under section 251, 371(1), or
23 this subsection for such periods of time that the employee is
24 unable to obtain or perform work because of imprisonment or
25 commission of a crime.

26 (2) In cases included in the following schedule, the
27 disability in each case shall be considered to continue for the

1 period specified, and the compensation paid for the personal injury
 2 shall be 80% of the after-tax average weekly wage subject to the
 3 maximum and minimum rates of compensation under this act. ~~for the~~
 4 ~~loss of the following:~~ THE EFFECT OF ANY JOINT REPLACEMENT SURGERY,
 5 IMPLANT, OR OTHER MEDICAL PROCEDURE SHALL BE CONSIDERED IN
 6 DETERMINING WHETHER A LOSS HAS OCCURRED. THE DISABILITY PERIOD FOR
 7 THE LOSS SHALL BE CONSIDERED AS FOLLOWS:

- 8 (a) Thumb, 65 weeks.
- 9 (b) First finger, 38 weeks.
- 10 (c) Second finger, 33 weeks.
- 11 (d) Third finger, 22 weeks.
- 12 (e) Fourth finger, 16 weeks.

13 The loss of the first phalange of the thumb, or of any finger,
 14 shall be considered to be equal to the loss of 1/2 of that thumb or
 15 finger, and compensation shall be 1/2 of the amount above
 16 specified.

17 The loss of more than 1 phalange shall be considered as the
 18 loss of the entire finger or thumb. The amount received for more
 19 than 1 finger shall not exceed the amount provided in this schedule
 20 for the loss of a hand.

- 21 (f) Great toe, 33 weeks.
- 22 (g) A toe other than the great toe, 11 weeks.

23 The loss of the first phalange of any toe shall be considered

24 The sentence above concerning joint replacement surgery is intended not to codify a judicial decision.
 25 Indeed, it's intended to do just the opposite. Nevertheless, if this sentence is to be adopted, it should be
 26 moved up one sentence to the beginning of Subsection (2) so that it does not interrupt what was
 27 previously the last sentence. This section is the scheduled loss benefit, which is intended to guarantee
 employees a certain number of weeks regardless of disability. Hopefully this was not intended to mean
 that a person who has his leg amputated is only entitled to 215 weeks of benefits and not a general
 disability benefit, which is available to all other workers who have permanent disabilities. However, the
 last phrase: "shall be considered as follows" is different than the deleted phrase which says: "shall be
 considered to continue for the period specified". Is it now being intended that the period of disability
 shall **not** be considered to continue beyond the period specified? Hopefully not.

(h) Hand, 215 weeks.

(i) Arm, 269 weeks.

An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.

(l) Eye, 162 weeks.

Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

(3) Total and permanent disability, compensation for which is provided in section 351 means:

(a) Total and permanent loss of sight of both eyes.

(b) Loss of both legs or both feet at or above the ankle.

(c) Loss of both arms or both hands at or above the wrist.

(d) Loss of any 2 of the members or faculties in subdivisions SUBDIVISION (a), (b), or (c).

(e) Permanent and complete paralysis of both legs or both arms or of 1 leg and 1 arm.

(f) Incurable insanity or imbecility.

(g) Permanent and total loss of industrial use of both legs or both hands or both arms or 1 leg and 1 arm; for the purpose of this subdivision such permanency shall be determined not less than 30 days before the expiration of 500 weeks from the date of injury.

(4) The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated. In case of the loss of 1 member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period provided in this section. Payments for the loss of a second member shall begin at the conclusion of the payments for the first member.

Sec. 801. (1) Compensation shall be paid promptly and directly to the person entitled thereto and shall become due and payable on the fourteenth day after the employer has notice or knowledge of the disability or death, on which date all compensation then accrued shall be paid. Thereafter compensation shall be paid in weekly installments. Every carrier shall keep a record of all payments made under this act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the bureau as the director may reasonably require.

(2) If weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable ~~in cases where~~ AND there is not an ongoing dispute, \$50.00 per day shall be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500.00 in total may be added pursuant to this subsection.

(3) If medical bills or A travel allowance ~~are~~ IS not paid within 30 days after the carrier has received notice of nonpayment by certified mail ~~in cases where~~ AND there is no ongoing dispute, \$50.00 on the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the

1 medical bills or travel allowance ~~are~~ IS not paid. Not more than
2 \$1,500.00 in total may be added pursuant to this subsection.

3 (4) For purposes of rate-making daily charges paid under
4 subsection (2) shall not constitute elements of loss.

5 (5) An employer who has notice or knowledge of the disability
6 or death and fails to give notice to the carrier shall pay the
7 penalty provided for in subsection (2) for the period during which
8 the employer failed to notify the carrier.

9 (6) When weekly compensation is paid pursuant to an award of a
10 worker's compensation magistrate, an arbitrator, the board, the
11 appellate commission, or a court, interest on the compensation
12 shall be paid at the rate of ~~10% per annum from the date each~~
13 ~~payment was due, until paid.~~ CALCULATED IN THE SAME MANNER AS
14 PROVIDED FOR A MONEY JUDGMENT IN A CIVIL ACTION UNDER SECTION
15 6013(8) OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
16 600.6013(8).

17 Enacting section 1, Chapter 4 of the worker's disability
18 compensation act of 1969, 1969 PA 317, MCL 118.441 to 118.441, is
19 repealed.